

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by OpTel (California) Telecom, Inc.
(U-5797-C) For Authority To Suspend The
Provision Of End User Local Exchange Services.

Application 01-01-006
(Filed January 5, 2001)

**OPINION GRANTING APPLICATION TO SUSPEND
LOCAL EXCHANGE TELEPHONE SERVICE****1. Summary**

OpTel (California) Telecom, Inc. (OpTel), which offers telecommunications service to 430 customers in California, has filed for bankruptcy and seeks Commission authorization to suspend local telephone service in California. As required by Commission decisions interpreting Pub. Util. Code § 2889.3, and General Order (GO) 96-A, customers have been notified in advance of the termination of service, and OpTel has offered to assist them in transferring to other carriers. While OpTel should have been clearer in its notification to customers about this Commission's role in approving OpTel's request, we find, on balance, that OpTel's application should be granted.

OpTel may retain its certificate of public convenience and necessity (CPCN), but may not resume service to local exchange customers, or transfer its CPCN to a third party, unless it seeks and receives affirmative Commission consent to do so. OpTel shall also seek Commission approval pursuant to Pub. Util. Code § 851 if in the future it seeks to transfer any of its regulated business assets to a third party.

2. Background

OpTel is a Delaware corporation headquartered in Dallas, Texas. It is authorized in California to provide competitive local exchange services as a reseller and a facilities-based carrier pursuant to Decision (D.) 97-04-004, and is authorized to provide facilities-based interexchange service pursuant to D.97-06-100. The company's utility identification number is U-5797-C. OpTel's discontinuation of service will affect 430 end users, all of whom are residents of multiple dwelling unit properties served by OpTel.

OpTel and its affiliates have filed petitions under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware.¹ OpTel states that it has determined that it must discontinue operations in California. Specifically, it requests authority "to suspend its provision of end user local exchange services for an indefinite period of time."² OpTel states that it

may reinstitute these [local exchange end user service] or other offerings in the future, but has no current plans to do so. In the event that OpTel determines with finality that it will exit the California market, it will so advise the Commission and request cancellation of its operating authority.

3. Notice to Customers

Under Pub. Util. Code § 2889.3, before a telephone corporation providing interexchange services discontinues service to its customers, it must provide affected customers with written notice at least 30 days prior to the termination and assist in transferring the customers to another carrier. The notice must

¹ United States Bankruptcy Court for the District of Delaware, Chapter 11 Case No. 99-3951 (SLR).

² *Application*, filed Jan. 5, 2001, at 1.

describe the transfer arrangements, set forth the terms and conditions of the new service, and provide a toll-free number for questions. The transfer itself must be made without charge to the customer. The Commission has extended these requests to carriers providing local exchange services.³

In an Amendment to Application filed April 2, 2001 (Amendment), OpTel explained its process for transferring its customers to other local exchange carriers. On December 18, 2000 (for residents of four multiple dwelling units) and January 18, 2001 (for residents of the remaining multiple dwelling unit), OpTel notified affected customers of its intent to discontinue service to those units. (An exemplar of the letter appears as Appendix A to this decision.) OpTel gave information on how to contact the incumbent local exchange carrier, Pacific Bell, and stated that it would cooperate with the customers' chosen service provider in the transfer of their telephone service. It also informed customers of its application to discontinue service pending before the Federal Communications Commission (FCC), and gave information on how to contact the FCC. However, OpTel did not mention its application to this Commission to suspend service, or state that such suspension could not occur without the Commission's approval.

OpTel stated that "[a]ny deposits or refunds that may be due to you from OpTel will be sent to you approximately 30 days following the discontinuation of your telephone service."⁴ As of April 2, 2001, it had already refunded, or planned to refund "all unapplied deposits and advance payments made by its customers in accordance with the provisions of its tariff governing return of

³ See D.97-06-096, D.01-06-036, and GO 96-A.

⁴ See Appendix A hereto.

customer deposits and credit balances.”⁵ OpTel also provided its customers a toll-free number to which to direct questions.

OpTel stated in the Amendment that “prior to the date of this [A]mendment, all of OpTel’s customers migrated their services to other local exchange carriers and OpTel is no longer providing any local exchange services to any end users in California.”⁶ OpTel went on to state that it “did not discontinue service to any customer in good standing who did not voluntarily migrate service to another carrier, first.”⁷

This Commission has no open complaints from any OpTel customer regarding the way in which OpTel effected the customer transfer. The Commission has one closed informal complaint from an anonymous caller indicating that the caller was told s/he could have call forwarding from his/her old OpTel telephone number to the new number, and that it turned out call forwarding would not work without having someone “reconfigure [the] telephone box switches.”⁸ However, the customer never followed up with the Commission, and the informal complaint is now listed as closed. This complaint does not provide sufficient evidence to deny OpTel’s application since it is anonymous and closed. OpTel provided a sworn statement indicating that it received no opposition to its proposal to suspend service.⁹ OpTel also swore that

⁵ *Amendment to Application*, filed April 2, 2001, at 4.

⁶ *Id.* at 1.

⁷ *Id.* at 4.

⁸ The Commission’s summary of the complaint is Appendix B hereto.

⁹ *Id.* at 2; *see also Verification and Declaration of Scott Williams* (OpTel’s Vice President and General Counsel), swearing to the lack of opposition.

it was “not aware of any formal complaints pending against Applicant at the Commission, the [FCC], or any other state regulatory commission.”¹⁰

Finally, OpTel stated that if it were to seek to transfer any of its property to third parties in the future, it would file a Pub. Util. Code § 851 application for Commission approval of such a transaction.

4. Discussion

We accept OpTel’s representations that its withdrawal from the telecommunications market is necessary in view of the company’s financial distress.

With one exception, OpTel has undertaken the customer notification process required by law, providing customers with sufficient notice and opportunity to select another provider and minimize service disruption. OpTel should have notified customers that not only the FCC but also this Commission had to approve OpTel’s plans. We will not deny OpTel’s application based on this omission, especially since OpTel filed this application in January 2001. Since that time, a significant downturn in the telecommunications market has required that we issue several decisions passing on the adequacy of competitive local exchange carriers’ wholesale transfers of their customers to other carriers.¹¹ These decisions have reiterated our customer notice requirements, including the requirement that an applicant to discontinue service state that the Commission must approve such plans. Because OpTel mentioned the FCC’s role in approving

¹⁰ *Id.*

¹¹ *See, e.g.*, D.01-06-036 (Verizon Select Services), D.01-08-068 (Cable and Wireless), D.01-09-040 (Rhythms Links), and D.01-10-063 (BroadBand Office Communications, Inc.).

the application, and filed its application in January 2001, we approve the application without requiring another customer notice. However, new applicants should be careful to indicate in their customer notices the Commission's role in approving plans to discontinue service.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. OpTel, a telecommunications carrier, has filed for bankruptcy and wishes to suspend local exchange telephone service in California for an indefinite period of time.

2. OpTel notified its local exchange customers of the need for them to transfer carriers, offered to assist in the transition, gave customers contact information for the incumbent local exchange carrier (Pacific Bell), provided a toll free number for questions related to the transfer, and offered and made customer refunds.

3. The sole complaint related to the transfer is anonymous and closed.

4. All of OpTel's customers have transferred service to other carriers.

5. OpTel is not aware of any formal complaints pending against it at this Commission, the FCC, or any other state regulatory commission.

6. OpTel did not explicitly state in its customer notice that this Commission must approve OpTel's plans.

Conclusions of Law

1. No protests have been filed, and no hearing is necessary.

2. In all but one respect, OpTel's customer notice efforts conform to Pub. Util. Code § 2889.3, GO 96-A, and Commission decisions.

3. OpTel should have stated in its customer notice that this Commission had final say over OpTel's decision to suspend service. However, Since OpTel filed its application in January 2001, it may not have been aware of this requirement, which the Commission reiterated in detail in several decisions issued later in 2001. New applicants seeking to discontinue or suspend service shall include such information in their customer notices.

4. OpTel's application to suspend service should be granted.

5. The informal complaint related to the transfer does not provide sufficient evidence to deny OpTel's application since it is anonymous and closed.

O R D E R

IT IS ORDERED that:

1. The application of OpTel (California) Telecom, Inc. (U-5797-C) (OpTel) for Authority to Suspend the Provision of End User Local Exchange Services is granted, subject to the conditions set forth below.

2. OpTel shall make all books and records available for review and inspection upon Commission staff request.

3. OpTel may retain its certificate of public convenience and necessity (CPCN), but may not resume local exchange service to customers, or transfer its CPCN to a third party, without the affirmative consent of this Commission.

4. OpTel may not transfer regulated business assets to a third party without Commission authorization pursuant to Pub. Util. Code § 851.

5. OpTel shall refund all outstanding customer balances and deposits and notify the Commission's Telecommunications Division by Advice Letter when it has done so, attaching evidence documenting such refunds.

6. In the event that OpTel determines with finality that it will exit the California market, it shall advise the Commission and request cancellation of its CPCN.

7. The authority granted in this order shall expire if not exercised within 12 months after the effective date of this order.

8. Application 01-01-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

APPENDIX A



December 18, 2000

NOTICE OF DISCONTINUATION OF TELEPHONE SERVICE

Dear OpTel Telephone Customer:

Please be advised that OpTel intends to discontinue the provision of local and long distance telephone service to the property in which you reside effective on or after January 31, 2001. As a result, as of that date, OpTel may no longer be available to provide you with local or long distance service.

You will need to make arrangements for other telephone service. OpTel encourages you to immediately make plans to transfer your OpTel local and long distance telephone services to the alternative service provider of your choice. Although you may transfer your telephone services to the alternative provider of your choice, in the event you would like Pacific Bell Telephone, the incumbent local telephone company, to be your new provider, you should order the transfer of your service from Pacific Bell Telephone by calling 1-800-310-2355. Of course, OpTel will cooperate with your chosen service provider in the transfer of your telephone service.

Any deposits or refunds that may be due to you from OpTel will be sent to you approximately 30 days following the discontinuation of your telephone service.

OpTel has filed an application with the FCC for authority to discontinue service as described above. The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to Federal Communications Commission, Washington, D.C. 20554, referencing the § 63.71 Application of OpTel, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you, including any inability to acquire reasonable substitute service.

OpTel has appreciated the opportunity to be your telephone service provider. Please direct any questions you may have to OpTel's Customer Service Department at 800-487-3320.

Sincerely,

OpTel

(END OF APPENDIX A)

APPENDIX B

CALIFORNIA PUBLIC UTILITIES COMMISSION
CONSUMERS SERVICES DIVISION
CONSUMERS AFFAIRS BRANCH
CONTACT: 01-00-5212 Residential

Consumer Name: "REDACTED"
Contact Handled by: Eddie R Seigler

Contact Filed: 29-JAN-2001 To Utility: Closed On: 29-JAN-2001

Contact Type: Informal Complaint Contact Source: Phone
Util Industry Type: Competitive Local Carrier
CORP ID/Name: 5797 OPTEL (CALIFORNIA) TELECOMM, INC.
Billing Agent:
Category: Service Subcategory: Company Practice

Service Addr: 00000

Mailing Addr:

Utility Account ID:

Phone#:
(CBR#):

Doing Business as (DBA):
Submitted by:

Details to Utility

CUSTOMER SAYS SWITCHED FROM OPTEL TO ANOTHER LOCAL CARRIER AND WAS
PROMISED THEY COULD DO CALL FORWARDING.... BUT NOW SAYS CAN NOT
...WOULD HAVE TO HAVE SOMEONE RECONFIGURE TELEPHONE BOX SWITCHES

(END OF APPENDIX B)